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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Butte)

In re M.C. et al., Persons Coming Under the Juvenile
Court Law.

BUTTE COUNTY DEPARTMENT OF
EMPLOYMENT AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

R.C.,

Defendant and Appellant.

C088153

(Super. Ct. Nos. 17DP00064,
17DP00065, 17DP00066)

Father, R.C., appeals from the juvenile court's order denying his Welfare and Institutions Code section 388¹ petition for modification for reinstatement of reunification services. He contends he demonstrated changed circumstances sufficient to warrant

¹ Undesignated statutory references are to the Welfare and Institutions Code.

granting the petition. He also argues that in light of the error in denying the petition, the order terminating his parental rights must be set aside. We conclude the juvenile court did not abuse its discretion in denying father's petition for modification. We affirm the juvenile court's orders.

BACKGROUND

Between February 2013 and February 2016 the Butte County Department of Health and Human Services (Department) received a number of substantiated referrals of general neglect regarding the children. Beginning in December 2016, a social worker with the Department worked with father for two months under a safety plan to get his home clean and safe for his minor children.² After two months of working under the plan, the social worker and a Butte County Sheriff's Deputy found the physical environment of father's home was an immediate threat to the children, and took them into protective custody.

The juvenile court ordered the children detained, authorized drug and alcohol testing, and visitation to father. The Department filed a petition under section 300, subdivision (b), alleging the three minors, then ages 2, 4, and 6, were at substantial risk of harm due to the failure of the parents to adequately supervise and protect them, and the parents' willful or negligent failure to provide the children with adequate food, clothing, shelter or medical treatment.³ Father waived his right to a jurisdictional hearing and the juvenile court sustained the allegations of the petition. The juvenile court also ordered reasonable visitation.

² There is a fourth minor child that is not a party to this case and therefore, not discussed in this opinion.

³ Since mother is not a party to this appeal, the facts relevant to her are not recounted in this opinion.

Between detention and the jurisdictional hearing, the Department asked father to drug test 10 times: he failed to appear 8 times, and the 2 times he tested, the tests were positive for methamphetamine. Father claimed he had last used methamphetamine two weeks prior to the jurisdictional hearing, meaning in approximately late March 2017. He had missed a drug test the day before the hearing. The juvenile court ordered him to test that day, after the hearing. Father had also been referred to Parent Support Group, but did not start it.

By the disposition hearing, approximately two months later, father had attended one parent support group meeting and one Child and Family Team meeting. He had missed 16 out of 18 drug tests. He claimed he was not using, and had last used in March, but “just blew [the testing] off.” The juvenile court again ordered him to test that day, after the hearing. Father was also participating in supervised visits with the children, every week for one hour. He interacted well with the children in visits. The juvenile court removed the children from the parents and ordered reunification services and visitation for the parents and grandparents. The juvenile court authorized counseling and substance abuse testing. As one of the children was under three years old, father was notified he only had six months to reunify.

Two months later, father continued to fail to appear at all required drug testing. He had not been attending the parent support group. He continued to visit with the children weekly, and the children had a strong connection and good rapport with him. The juvenile court again ordered him to drug test that day, after the hearing. The juvenile court reminded father he only had six months to reunify and had “blown” three of those months with the dirty drug tests and failure to attend the parent support group. Father claimed he had been clean for five months. Father failed to drug test after the hearing and did not appear in court the next day as ordered.

Between that hearing and the six-month review, father refused to let the social worker look at his home, did not go to parent counseling after several referrals and no shows, declined to attend Child and Family Team meetings, did not attend mental health and drug and alcohol assessments, and tested positive for methamphetamine twice. He claimed he had attended his drug and alcohol assessment, but did not provide documentation to the social worker. He had attended weekly supervised visitation. He interacted with the children through talk and play. Father left one visit early, stating the “kids are too upset.” Apparently, the middle child was crying and asking for her substitute care provider when father went to the play area with the oldest child. The social worker concluded father’s minimal participation demonstrated he was not ready to parent the children, despite his clear love for them. His denial of his drug use placed the children at high risk of neglect, and he had not demonstrated new skills or behavior consistent with the case plan objectives. The social worker recommended reunification services be terminated and the matter be set for a section 366.26 hearing. In addition, in the month between the filing of the six-month review and the six-month review hearing, father did not drug test.

The juvenile court found father had done virtually nothing to comply with the case plan and was still actively using drugs. The juvenile court noted father had visited the children, but was still “a long way from being clean and sober.” The juvenile court found father had made minimal progress in his plan, returning the children would create a substantial risk of detriment, and terminated reunification services. The juvenile court authorized continued substance abuse testing and visitation if it was in the best interest of the children.

The Department filed a section 366.26 report recommending the juvenile court terminate parental rights and order a permanent plan of adoption. Father had continued to visit the children twice a month. In the visits, the children sometimes got rough with

father and father did not readily redirect them. On more than one occasion, he also made inappropriate remarks in front of them and did not control his anger during a visit. Butte County Adoption Services conducted an adoption assessment and concluded the children were adoptable, although they were not currently placed in a potential adoptive home. By the time of the hearing, their current foster home was committed to permanency with the children, and had become a preadoptive placement.

Approximately five months after the order terminating reunification services, father filed a petition to modify the order under section 388. Father claimed he had established “a period of sobriety beginning” approximately three months earlier, had sought out voluntary services, maintained a safe and clean home, and had a stable source of income. He claimed he had made substantial changes to his lifestyle to provide for the children and it was in their best interest to have a permanent home with him.

The trial court held a joint hearing on the modification petition and termination of parental rights. The Department had requested defendant submit to two drug tests. He failed to appear for the first, but the second was negative for all substances. Father submitted a hair follicle drug test that indicated he was clean and sober as of June 17, approximately a week and a half after he filed the modification petitions. The failure to appear for drug testing approximately three weeks later constituted a positive test.

At the hearing, father testified he currently attended Narcotics Anonymous (NA) meetings twice a day; was working the twelve-step program, and currently on the fourth step; had been working with a sponsor since March 9, approximately four months; and had been clean since March 7. He was not participating in any additional drug treatment. Methamphetamine had been his drug of choice for approximately the last three years. As to where he was on the path of sobriety, he understood he was at the beginning, and he was still learning about sobriety. Since services were terminated, father had completed an eight-week Parents Group, was on the fifth week of a sixteen-week parenting class,

and was attending a parent support group. He acknowledged he had become upset at a visit, when he was not allowed to videotape his children during a birthday song for one of them.

As to the benefit to his children, father testified it would benefit them for him to have additional services because he loved them. He stated being returned to him would be better for the children because he could give them a happy life, “children need their parents. Not only is it healthier for the children but it’s also healthier for the parents.”

Father’s friend and NA support person Adam testified he was a close friend of the couple father lived with. While Adam stated he is a sponsor for father, he later explained that he is more of a support person and goes to meetings as a friend; not as a sponsor. Adam and father had phone calls, went places together, and handed out vouchers to the homeless. Adam did not do book work with father or review father’s work. They had discussed some of the program steps but Adam did not feel qualified to work the steps with father. Adam had never read the NA book, did not work it himself, and was not sure what the steps were.

The adoptions specialist testified she had observed two supervised visits. She observed a “definite relationship there.” The girls know who father is and that he is their father. They are excited and happy to see him. The children “roughhoused” quite a bit with father during visits. The social worker supervising the visits had to repeatedly redirect father and the girls to change the nature of the play. Father also made some inappropriate comments during the visits, about the children’s maternal grandmother and whether social services was “beating his kids.” The children’s behavior did not regress when visits were reduced to twice a month. She also opined it would be detrimental to remove the children from their current placement. The children had a bond with their foster parent, and she had been their primary caretaker for almost a year and a half. They looked to her for comfort and support, and she meets their needs.

The juvenile court noted father had only been going to NA for four months. The juvenile court was concerned about father's participation in NA, as father did not have an actual sponsor, only a supportive friend; there was no indication father was truly working the steps of the program; the meetings were private meetings at his friend's home, not organized NA meetings; and the logs of those meetings appeared forged. The juvenile court also noted it did not appear the parental education courses had been effective because the visits continued to be chaotic, and he was not teaching his children to behave appropriately. The juvenile court found the hair follicle test unpersuasive, as father also subsequently had missed tests, which he knew were considered dirty tests. The juvenile court denied the petition for modification, finding father was changing, but had not shown a permanent change, and it was not beneficial or in the best interest of the children to offer father additional reunification services. The juvenile court also found the children adoptable, terminated parental rights, and declared adoption was the children's permanent plan.

DISCUSSION

Father contends the trial court erred in denying his petition to modify. He argues he only had six months of services then "turned his life around" and the children were strongly bonded to him.

"To prevail on a section 388 petition, the moving party must establish that (1) new evidence or changed circumstances exist, and (2) the proposed change would promote the best interests of the child. [Citation.]" (*In re J.T.* (2014) 228 Cal.App.4th 953, 965.) The change of circumstances or new evidence "must be of such significant nature that it requires a setting aside or modification of the challenged prior order." (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485; see also *In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1451.) When reunification services have been terminated and a section 366.26 hearing has already been set, a court assessing the child's best interests

must recognize that the focus of the case has shifted from the parents' interest in the care, custody, and companionship of the child to the needs of the child for permanency and stability. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) The child's best interests "are not to further delay permanency and stability in favor of rewarding" the parent for his or her "hard work and efforts to reunify." (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.) "A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests. [Citation.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) We review a juvenile court's denial of a section 388 petition for abuse of discretion. (*In re J.T.*, at p. 965.)

Father had at least a three-year history of using methamphetamine and substantiated claims of child neglect. During the nearly 11 months⁴ between initiation of this case and termination of reunification services, father failed every drug test either by missing it or testing positive. He refused or declined to participate in parenting classes or counseling services. Father did not attend or participate in any drug rehabilitation or treatment programs other than NA meetings. He did not start attending those NA meetings at all until two months after services were terminated, over a year after the case was initiated. Father himself acknowledged he was just at the beginning of his sobriety journey and was still learning about it. In addition, during the pendency of the case, father had a history of falsely claiming months long periods of sobriety and a history of making claims of participation in services without providing documentation of that

⁴ Father contends he was only provided six months of services. He is wrong. The section 300 petition was filed February 27, 2017, and the trial court terminated reunification services on January 11, 2018. In addition, father received two months of voluntary assistance prior to the petition being filed.

participation. That history continued into the hearing on the petition to modify where father: claimed months of sobriety, but continued to miss drug tests belying the claim; claimed participation in NA with a sponsor, but did not have a real sponsor, rather, he had a supportive friend; provided logs of his attendance at meetings that appeared forged to the court; and claimed completion of one, and participation in another, parenting class but did not provide the court with documentation supporting this claim. In addition, father's behavior at visits with the children and the supervising social worker demonstrated, to the extent father did actually take some parenting classes, he had not demonstrated he had benefitted from those classes with an ability to apply the knowledge he had gained, or that his parenting skills had improved.

In sum, father's recent sobriety, participation in four months of NA meetings, and possible completion of some parenting classes does not demonstrate significant changed circumstances. Instead, the petition alleges merely changing circumstances. Based on our conclusion, we need not reach the issue of the best interests of the child. (§ 388, subd. (a).)⁵

⁵ Under the heading for this argument, father also includes argument suggesting he is arguing the juvenile court erred in terminating his parental rights based on the beneficial relationship exception to adoption. Father did not separately head or argue such a claim; the argument under the heading begins and ends with the claim that the challenge to the termination is based on the error in denying the section 388 petition. The conclusion of the briefs also relies on this error as the basis for challenging the termination order (not a beneficial relationship claim). “[A]ppellant’s brief ‘must’ ‘[s]tate each point under a separate heading or subheading summarizing the point’ [Citations.] This is not a mere technical requirement; it is ‘designed to lighten the labors of the appellate tribunals by requiring the litigants to present their cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass.’ [Citations.]” (*In re S.C.* (2006) 138 Cal.App.4th 396, 408; Cal. Rules of Court, rule 8.204(a)(1)(B).) The failure to comply with the rule requiring each point to be presented in an appellate brief under a

Having determined the juvenile court did not abuse its discretion in denying the petition to modify, we need not address father’s second claim that “in light of the error denying [his] section 388 motion, the orders terminating his parental rights must be set aside.”

DISPOSITION

The orders of the juvenile court are affirmed.

_____/s/
HOCH, J.

We concur:

_____/s/
MURRAY, Acting P. J.

_____/s/
RENNER, J.

separate heading forfeits the issue on appeal. (*Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 201.)